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The Challenges of Investigative Journalism

SILVIO WAISBORD

Investigative journalism (IJ) has become ubiquitous in contemporary Latin America. Relegated to partisan and marginal publications in the past, IJ gained acceptance in the mainstream press in the 1980s and 1990s. Several reasons account for the affirmation of IJ: the consolidation of democratic governments; the mediation of politics; transformations in media economics; the existence of publications committed to denouncing specific abuses; and confrontations between news organizations and administrations. Despite common characteristics, IJ in each country has experienced a seesaw evolution due to varying domestic political developments as well as editorial and industrial changes in the news media.

IJ reports information about publicly relevant abuses that certain individuals and organizations want to remain secret. Pushing the boundaries of daily journalism, IJ goes beyond conventional reporting and does not take manufactured, spoon-fed news as news. The mission of IJ has recently been defined as the discovery of the truth.¹ Because all reporting is (or should be) essentially investigative, it is redundant to define IJ in terms of the use of certain newsgathering methods. To adopt this view is not intended to underestimate the importance of methods used to denounce wrongdoing. Instead, it emphasizes that investigative methods are not unique to IJ. IJ is distinctive in that it publicizes information about wrongdoing affecting the public interest. However, since not all issues are similarly relevant to the public and democracy, not every public exposure is synonymous with IJ. Therefore, the question becomes whether the revealed information has public significance or, in other words, does it affect the public interest?

The main value of IJ to democratic governance is its contribution to increasing political accountability. This is particularly important considering that the weakness of accountability mechanisms has been identified as one of the most serious problems of many Latin American democracies.²

The role of IJ can be understood along the lines of the "Fourth Estate" model under which the press makes the government accountable

1. See INVESTIGATIVE JOURNALISM, CONTEXT & PRACTICE 9 (Hugo de Burgh ed., 2000).

2. FAULT LINES OF DEMOCRACY IN POST-TRANSITION LATIN AMERICA 8 (Agüero et al. eds., 1998); COMBATING CORRUPTION IN LATIN AMERICA 107 (Joseph S. Tulchin et al. eds., 2000).

by publishing information about issues that are of public interest. As Julianne Schultz puts it, "[t]he process of finding, distilling, and analysing the information that is the media's commodity also ensures its political role, the core of its self-definition as the Fourth Estate."³ If scrutiny of public officials is fundamental for democracy to work, the media provides the fundamental information to make it possible. From this perspective, IJ is one of the press's most important contributions to democracy. Linked to the logic of check and balances in democratic systems, IJ provides a valuable mechanism for monitoring the performance of democratic institutions.

The idea of "Fourth Estate" must be taken critically as it is premised on the idea of a fully independent press that keeps government at a distance. The underling reality of IJ, however, is different. IJ is part of a complex network of relationships between news organizations, government offices, and other actors. Political and economic issues, as well as continuous information exchange, articulate the multi-layered relationship between the news media and government. Unlike other "estates," the media's success is contingent upon commercial performance. Although the media is expected to make political and public contributions to democracy, the stability and function of media organizations strongly depend on their economic situation. There exists no need to have the press wholly committed to scrutinizing government action for IJ to exist; partial divisions and confrontations in those relations often make IJ possible.

I. IJ CONTRIBUTES TO DEMOCRACY

IJ contributes to democracy in several ways. The publication of news concerning political and economic wrongdoing has the potential to trigger congressional and judicial investigations, as seen in press investigations about arms dealings during the Menem administration in Argentina⁴ or human rights abuses in Alberto Fujimori's Peru.⁵ The centrality of the media in contemporary democracies forces political elites to be

3. See JULIANNE SCHULTZ, *REVIVING THE FOURTH ESTATE: DEMOCRACY, ACCOUNTABILITY & THE MEDIA* 2 (1998).

4. See Michael McCaughran, *Is the Honeymoon over for Menem?*, THE IRISH TIMES, June 23, 2001, at 51; *Transparently Dishonest?* LATIN AMERICAN REGIONAL REPORTS: SOUTHERN CONE, Oct. 13, 1998, at 6, available at LEXIS, North/South American Archive News File.

5. See TV News Programme Says Army Tortured Alleged MRTA Members (BBC Summary of World Broadcasts, Mar. 25, 1997), available at LEXIS, North/South American News File; Abraham Lama, *Human Rights: The Achilles' Heel of the Peruvian Government*, INTER PRESS SERVICE, July 16, 1998, available at LEXIS, North/South American Archives News File; SILVIO WAISBORD, *WATCHDOG JOURNALISM IN SOUTH AMERICA: NEWS, ACCOUNTABILITY, & DEMOCRACY* 53 (2000).

sensitive to news, particularly "bad news" that may lead to a public commotion.

Certainly, many press exposes have met tepid reactions from the public and lawmakers. For example, exposes on the working conditions for tobacco workers in Argentina,⁶ racial discrimination in the workplace in Brazil,⁷ and police corruption in Mexico⁸ in the past decade did not result in congressional investigations. Consequently, these stories faded out of public attention and government officials did not "pick them up." Exposes do not consistently generate equal interest among readers and viewers; nor do lawmakers show similar interest in initiating further investigations. It would be wrong, however, to view the press as working autonomously from other institutions. News management actions by public officials, as well as reporters' reliance on official sources, attest to the proximity between the government and the press in newsmaking. The wide acceptance of official leaks as primary sources for denunciations is an example of such dynamics.

Also, journalists often work closely with representatives and prosecutors to maintain relationships of information exchange throughout the processes of revelation and investigation. Notwithstanding the prohibition of public access to judicial investigations, it is an open secret in newsrooms and political corridors that journalists and prosecutors are often in contact and share information. These collaborative practices are partially the result of newsroom routines and a professional culture that prioritize official sources. Additionally, these practices are a consequence of the absence of laws facilitating public access to information or in some cases where these laws do exist, the lack of effective enforcement. Colombian journalists are able to petition information, but their demands often meet rejection or silence from the very offices that are supposed to attend to such demands.⁹ During Fujimori's presidential tenure, while Peruvian laws existed establishing access to official information, such laws were ineffective in actually helping journalists in

6. WAISBORD, *supra* note 5, at 53.

7. See Jack Epstein, *Honor for a Brazilian Hero, 300 Years Late as Brazil Reluctantly Admits its Racism*, SAN FRAN. CHRON., Dec. 10, 1995, at 5; Mario Osava, *Rights-Brazil: The Face of Poverty is Black and Female*, INTER PRESS SERVICE, July 11, 2001, available at LEXIS, North/South American Archive News File; see also *Discrimination Creates Suffering Among Indigenous People*, XINHUA GEN. NEWS SERV. Dec. 7, 2000, available at LEXIS, North/South American Archive News File.

8. See Addison Dewitt, *Rogue Police in Mexico*, THE NEWS LEADER, Apr. 19, 1999, at 10, available at LEXIS, North/South American Archive News File; Sam Dillion, *McPhail Murder Case Highlights Graft Crackdown in Mexico*, THE NEWS, Feb. 7, 1999, available at LEXIS, North/South American Archive News File.

9. WAISBORD, *supra* note 5, at 106-07.

obtaining government records.¹⁰ The ineffectiveness of these laws reinforces the close ties between journalists and official sources in terms of information exchange. Therefore, IJ reflects dynamics of collaboration between the press and other institutions: the press needs information that often is monopolized by government officials; the latter need the press for "news management" to set the news agenda.

IJ also contributes to accountability by monitoring the functioning of democratic institutions. IJ can examine how well those institutions actually fulfill their constitutional mandates, which is particularly important in the aftermath of press denunciations. In cases when other institutions fail to investigate, or investigations are plagued with problems and suspicions, IJ can monitor the responsiveness as well as the performance of the investigating institution.

Continuous press attention is particularly valuable in specific cases of wrongdoing when neither legislative bodies nor judiciaries show interest in following up initial press revelations. Institutional lethargy, ineffectiveness, and a general lack of responsiveness to public demands are major weaknesses of contemporary Latin American democracies.¹¹ In this context, IJ retains important agenda-setting powers to remind the public and the political elites about the existence of certain issues. Certainly, there are no guarantees that continuous press attention would prompt congressional and judiciary actions to investigate and prosecute those responsible for wrongdoing. But in many recent cases, the existence of news organizations committed to keeping denunciations alive eventually forced other institutions to take action, such as the constant press attention directed towards Ricardo Cavallo, a former Argentine military officer who participated in human rights violations in the 1970s and later developed extensive political and business contacts in Mexico and Central America.¹²

Investigative reports have proven to be sufficiently powerful to lead to the resignation of officials presumably involved in wrongdoing. These resignations arguably show accountability at work: officials identified by press exposes as responsible for illegal acts are held accountable and decide (or are forced) to resign. During the 1990s, numerous

10. Annual Report of the Inter-American Commission on Human Rights 1999, Vol. III, Report of the Office of the Special Rapporteur for Freedom of Expression, OEA/Ser. L/V/II.106, doc. 3 rev., at 26 (2000), available at <http://www.cidh.org/Relatoria/English/Home.htm> [hereinafter 1999 REPORT].

11. See generally THE SELF-RESTRAINING STATE: POWER AND ACCOUNTABILITY IN NEW DEMOCRACIES (Andreas Schedler et al. eds., 1999).

12. See generally Diego Cevalos, *Rights-Argentina: Interpol Detains Alleged Torturer in Mexico* INTER PRESS SERVICE, Aug. 24, 2000 available at LEXIS, North/South American Archive News Files.

officials resigned in the wake of press reports, sometimes even before judicial investigations and congressional inquiries were set in motion or concluded. Press exposes, for example, triggered the political processes that resulted in the resignation of President Alberto Bucaram of Ecuador and President Carlos Andres Perez of Venezuela.¹³

The news media has tremendous power in turning public officials (and organizations) into symbols of wrongdoing, regardless of legal judgment and sanction. More than any other institution, IJ stimulates public perception about the existence of wrongdoing and wields an unmatched power to link officials to certain crimes. This power, however, is a double-edged sword: reporting wrongdoing brings public attention to presumed crimes, but it can lead to rushed public judgments about the responsibility of individuals without intervention from the institutions constitutionally designed to investigate and reach legal verdicts.¹⁴

By bringing out information that is not publicly available, IJ contributes to the nurturing of an informed citizenry which has been often considered a primary condition of democratic life.¹⁵ Information is a vital resource for the existence of a vigilant citizenry that holds the government accountable through voting and participation. In this regard, news organizations play a central role by providing citizens with news and information. With the ascent of media-centered politics in contemporary democracies, the media eclipses other social institutions as the main source of information about issues and processes affecting citizens' lives. Thus, the quality of media information becomes a subject of crucial importance. What defines quality information is debatable. Generally, it refers to truthful facts, news related to public life, and serious information that does not resort to sensationalistic appeals. From this perspective, IJ must provide factual information that is relevant to public affairs.

IJ also contributes to democratic governance by indicating, through the press's unmatched role as an agenda setter, issues that require public consideration. Government wrongdoing has been the central focus of IJ

13. See *Corruption*, LATIN AMERICAN REGIONAL REPORTS: ANDEAN GROUP, Apr. 8, 1997, at 8, available at LEXIS, North/South American Archive News File. See also *Ecuador Who's corrupt now, then?* ECONOMIST, Feb. 28, 1998, at 40, available at LEXIS, Major World Publications File; Gabriel Escobar, *Ecuador Counts Losses to Allegedly Epic Corruption*, WASH. POST, Feb. 16, 1997, at A33.

14. See MATHEW KIERNAN, MEDICAL ETHICS: A PHILOSOPHICAL APPROACH 31 (1997); Alexis Simendinger, *Look Who Suspects a Cover-Up*, THE NAT'L JOURNAL, June 6, 1998, at 1308, available at LEXIS, News Group File.

15. See NICHOLAS GARNHAM, CAPITALISM & COMMUNICATION: GLOBAL CULTURE & THE ECONOMICS OF INFORMATION 104 (1990); MICHAEL SCHUDSON, THE POWER OF NEWS 204 (1995).

in Latin America during the last two decades.¹⁶ Other subjects (e.g. corporate venality and labor practices) have attracted significantly less attention. By focusing on government wrongdoing, IJ has arguably contributed to making official corruption a central theme in contemporary Latin American democracies as numerous polls indicate that corruption consistently ranks among the highest three concerns in the population throughout the region.¹⁷ Therefore, the content of the investigative agenda is important because it directs the attention of citizens and lawmakers to specific issues. From a perspective that considers that several areas need attention in contemporary Latin American democracies, an IJ that casts a wide net on a variety of issues is desirable.

II. PRESS FREEDOM AND INVESTIGATIVE JOURNALISM

Is IJ the byproduct of democratic consolidation? Is it a mere coincidence that IJ gained strength with the consolidation of liberal democracy in Latin America in the last two decades? Democracies make IJ possible by offering institutional conditions that allow for increasing press freedom, but the return of democracy per se does not necessarily trigger press freedoms. There is a close relationship between press freedom and IJ. To put it simply, IJ requires the existence of legal, political, and economic conditions that guarantee minimal autonomy for news organizations and journalists.

Press freedom is, by no means, an easily defined concept. Notwithstanding its uncontested status as the bedrock of the democratic press, it remains an ambiguous concept. Press freedom is commonly understood as “the absence of” oppression instead of “the presence of” freedom. In terms of Isaiah Berlin’s classic distinction, liberal definitions of press freedom approach it from the perspective of “negative” rather than “positive” liberty.¹⁸ Therefore, press freedom is associated with the absence of government censorship, gag laws, violence against reporters, or official meddling in newsrooms. Press freedom requires a set of institutions and laws that allow the press to keep government at arm’s length. Besides this, there is little consensus on the meaning of press freedom and its impact on IJ. Should burdensome taxes on news organizations be considered as indicators of the presence or absence of press freedom? Editorial decisions to kill stories? Advertising pressures? Political lobbying on journalists? Answers are wide-ranging on whether press free-

16. See WAISBORD, *supra* note 5, at 33-51.

17. See *id.* at 209-42.

18. See Alan James Edwards, *How Persuasive is Berlin's Distinction Between Positive and Negative Liberty*, available at <http://home.clara.net/alaedw/concepts.htm> (2000) (last visited Jan. 1, 2001); Wyles, *Agneli Prize for Sir Isaiah*, LONDON FINANCIAL TIMES, Dec. 17, 1987, at 12.

dom includes anything beyond formal and legal mechanisms through which governments intervene in the workings of the press.¹⁹

Identifying the existence of an independent press add little to help define press freedom. Press independence is commonly associated with the existence of news organizations that are independent from the government and political organizations. This idea, however, contradicts the reality of news organizations interwoven with political and economic powers, a point that numerous studies of journalism have extensively documented.²⁰ News production is linked to political, economic, and cultural networks and results from multileveled relationships between reporters and sources. This reality makes true press independence difficult, if not impossible. Instead, press freedom could be understood as a set of conditions anchored in a set of laws and practices that strengthen the autonomy of news organizations and reporters.

Under authoritarian regimes, the absence of constitutional freedoms eliminates the basic conditions that IJ needs to exist and thrive. Democracies, instead, usher in better conditions by reinstating constitutional rule and putting an end to the pervasive, suffocating atmosphere that usually exists during military dictatorships. After two decades of democracy in Latin America, however, evidence shows that press freedom (even when understood in a limited sense) requires other conditions besides constitutional rule. Unfettered optimism during democratic transitions have given way to a more sober (and even pessimistic) attitude about the present as well as the future prospects of press freedom.²¹ Notwithstanding the general improvement of conditions in Latin America, the press continues to face numerous problems, ranging from legal to political, from economic to industrial, that challenge the idea of press freedom. These problems put constraints on IJ.

III. CONSTRAINTS ON INVESTIGATIVE JOURNALISM

IJ faces external and internal constraints. Both types of constraints affect the practices and subjects that journalism investigates.²² Ideally, journalism that investigates a variety of issues and produces in-depth,

19. See generally James Curran, *Mass Media and Democracy Revisited*, in *MASS MEDIA AND SOCIETY* (James Curran et al. eds., 2d ed. 1996); JAMES CURRAN ET AL., *POWER WITHOUT RESPONSIBILITY* (5th ed. 1997).

20. See Peter Golding & Graham Murdock, *Culture, Communication, and Political Economy*, in *MASS MEDIA AND SOCIETY* 15-32 (James Curran et al. eds., 1991); Philip Schlesinger, *Rethinking the Sociology of Journalism: Source Strategies and the Limits of Media-Centrism*, in *PUBLIC COMMUNICATION: THE NEW IMPERATIVES* 61-83 (Marjorie Ferguson ed., 1990).

21. See generally WAISBORD, *supra* note 5. But see Richard R. Cole, *Conclusions: Toward the New Millennium*, in *COMMUNICATION IN LATIN AMERICA: JOURNALISM, MASS MEDIA, & SOCIETY* 245-46 (Richard R. Cole ed., 1996).

22. Joseph Bernt & Marilyn Greenwald, *Enterprise and Investigative Reporting in*

factual stories is desirable to contribute to the formation of an informed citizenry, public dialogue, and democratic accountability. External constraints refer to limitations on investigative work that exist outside newsrooms and affect IJ. Internal Restraints refer to pressures created by practices inside newsrooms.

A. *External Restraints*

1. LEGAL CONSTRAINTS

With the consolidation of democracy, formal censorship has been eliminated, but a number of legal constraints continue to make IJ difficult. Democratic constitutions are crucial but, alone, are insufficient to support IJ. IJ requires a number of legal protections in order to help it fulfill expectations about democratic accountability.

First, the absence of public access laws in some countries (Argentina, Bolivia, Brazil, and Mexico among others), limits the work of investigative reporters.²³ Although the majority of countries have laws granting journalists the right to petition for information, government offices lack resources to attend demands and the laws are rarely enforced. Observers have concluded that despite the laws on the books, there is no effective access to public information.²⁴ One problem is that laws have been passed, but they have not substantially changed reporting practices. The fact that government records have been historically understood in many countries as personal, rather than public property, makes the proper functioning of public access laws impossible. Only recently has this issue received more attention, simultaneous with the emergence of a burgeoning movement, including journalists' and other civil society organizations, demanding public access laws that would benefit all citizens.²⁵

Second, some countries (such as Bolivia, Guatemala, Honduras, and Mexico) lack laws granting journalists the right to professional secrecy.²⁶ In the absence of such laws, journalists may be coerced to

Metropolitan Newspapers: 1980 and 1995 Compared, in *THE BIG CHILL: INVESTIGATIVE REPORTING IN THE CURRENT MEDIA ENVIRONMENT* 53 (Marilyn Greenwald et al. eds., 2000).

23. See *CÓDIGO CIVIL* (Arg.) [hereinafter *Cód. Civ.*]; *CÓDIGO CIVIL* (Bol.); *CÓDIGO CIVIL* (Bra.); *CÓDIGO CIVIL PARA EL DISTRITO FEDERAL* (Mex.).

24. See Jairo E. Lanao, *The Press Faces the Legal Barriers in the Hemisphere*, in *FREEDOM OF THE PRESS AND THE LAWS: LAWS THAT AFFECT JOURNALISM IN THE AMERICAS* 32-40 (Ricardo Trotti ed., 1999). See generally ERNESTO VILLANUEVA, *DERECHO COMPARADO DE LA INFORMACIÓN* (1998).

25. See, e.g., Annual Report of the Inter-American Commission on Human Rights 2000, Vol. III, Report of the Office of the Special Rapporteur for Freedom of Expression, OEA/Ser. L/VII.III, doc. 20 rev., at 166-69 (2001), available at <http://www/cidh.org>. [hereinafter 2000 Report].

26. See *CÓDIGO CIVIL* (Guat.); *CÓDIGO CIVIL* (Hond.); *CÓDIGO CIVIL PARA EL DISTRITO FEDERAL* (Mex.).

reveal sources in court. Among the many arguments that have been offered for why such legislation is indispensable for journalism, two are particularly relevant to IJ. The right to professional secrecy gives credibility to journalists vis-à-vis their sources. Given the very nature of IJ, many sources are unwilling to be identified and desire anonymity and reporters need the ability to guarantee them confidentiality and protection. Needless to say, a lack of legal assurance discourages sources from providing information that is crucial to support denunciations. Certainly, the abuses of this practice result in problems, such as information that is not carefully substantiated and the manipulation of news through anonymous "spin doctoring." Notwithstanding these problems, journalists need professional secrecy as a special protection necessary to contribute to the public good.

Third, "right to reply" laws have also been the subject of controversy and remain a major obstacle for IJ. Virtually all Latin American countries have laws requiring news organizations to provide airtime or print space for subjects of stories to present their versions of the stories.²⁷ Publishers and journalists have criticized these laws for allowing officials to meddle into the affairs and decisions of private companies, and for discouraging the publication of controversial information.²⁸

Fourth, the attempts of several civilian administrations in Argentina, Brazil, Panama, and Paraguay (to name a few examples) to enact "gag laws" have also been at the center of heated debates.²⁹ Gag laws are laws that aim to discourage critical reporting by imposing hefty penalties to journalists and press organizations. Although many governments have not been successful in building congressional support for their approval, the gag law initiatives patently reveal an intention to muffle IJ through legislation that harshly punishes news organizations and reporters.

Fifth, insult and defamation laws also impair the work of investigative reporters.³⁰ The goal of insult laws is to punish the publication of information that is critical of public officials. A number of recent high profile cases pitting government officials against journalists, such as the

27. See Jack O'Dwyer, *Some Laws Threaten Press in Latin America*, JACK O'DWYER'S NEWSLETTER, Dec. 14, 1994, available at LEXIS, News Group File; UNITED PRESS INTERNATIONAL, Mar. 8, 1994, available at LEXIS, News Group File; *Second Thoughts on "Right to Reply" Wasmosy's Successful Suit Raises Hackles in Media*, LATIN AMERICAN WEEKLY REPORT, Mar. 28, 1996, at 141 available at LEXIS, News Group File.

28. See O'Dwyer, *supra* note 27, at 4; UNITED PRESS INTERNATIONAL, *supra* note 27.

29. LATIN AMERICA WEEKLY REPORT, *supra* note 27, at 141.

30. See THE POST AND COURIER, Oct. 22, 1997, at 16, available at LEXIS, News Group File; Joel Simon, *When Criticism Becomes a Crime*, THE QUILL, Aug. 1, 2000, at 42 available at LEXIS, News Group File.

Horacio Verbitsky v. Carlos Menem case in Argentina,³¹ show how insult laws can be used to deter potential press criticisms. By failing to discriminate between private citizens and public officials, these laws allow officials to claim protection as citizens that their public role does not justify.

Defamation laws have similar stifling effects on investigative reporting. As a number of recent cases illustrate, government officials in Latin America continue to resort to such laws. One case that has received a great deal of attention is the decision of a court in Costa Rica to convict Mauricio Herrera Ulloa and the daily *La Nación* of criminal defamation.³² Herrera Ulloa wrote articles that cited European press reports involving allegations of corruption by former diplomat Félix Przedborski.³³ Another recent case was the defamation charges brought by a former Mexico City mayor against a reporter and the president of the daily *Reforma* after the paper reported that a percentage of her administration's budget was missing.³⁴ In El Salvador, congressman and former vice president Francisco Merino sued five newspaper journalists for slander after the latter reported that the official had threatened a judge who was investigating him for corruption.³⁵

In addition to these laws, the same difficulties that persist for the existence of an independent judiciary in Latin America also remain a key obstacle for IJ. Experiences in other regions of the world, most notably in the United States in the 1960s and 1970s, attest to the fact that judicial decisions in favor of the press are fundamental for IJ.³⁶ Court

31. 2000 Report, *supra* note 25, at 36-38.

32. See Simon, *supra* note 30, at 42; Jenny Johnson, *A Matter of Interpretation: A Political Story in Argentina Covered by 60 Minutes*, COLUMBIA JOURNALISM REVIEW, Nov. 1995, at 18, available at LEXIS, Business Analysis & Country Information, and Selected Legal Texts and Codes File; Marcela Valente, *Argentina-Media: Journalists Under Siege*, INTER PRESS SERVICE, July 24, 1997, available at LEXIS, Business Analysis & Country Information, and Selected Legal Texts and Codes File.

33. See EEUU—*Prensa Condenan Dictamen Judicial contra Periodista en Costa Rica*, SPANISH NEWswire SERVICES, Mar. 2, 2001, available at LEXIS, Business Analysis & Country Information, and Selected Legal Texts and Codes File; SIP: *"Funesta" Decision de Tribunal Costarricense contra Periodista y Diario*, AGENCE FRANCE PRESSE—SPANISH, Jan. 26, 2001, available at LEXIS, Business Analysis & Country Information, and Selected Legal Texts and Codes File; EEUU—*Prensa SIP Condena un Fallo Contra un Periodista y Diario de Costa Rica*, SPANISH NEWswire SERVICES, Jan. 26, 2001, available at LEXIS, Business Analysis & Country Information, and Selected Legal Texts and Codes File.

34. See EEUU—*Prensa Condenan Dictamen Judicial contra Periodista en Costa Rica*, *supra* note 33; EEUU—*Prensa SIP Condena un Fallo contra un Periodista y Diario De Costa Rico*, *supra* note 33.

35. See EEUU—*Prensa la SIP Considera 'Represiva' una Acusacion contra Diario Mexicano*, SPANISH NEWswire SERVICES, May 2, 2001, available at LEXIS, Business Analysis & Country Information, and Selected Legal Texts and Codes File.

36. See generally TIMOTHY W. GLEASON, *THE WATCHDOG CONCEPT: THE PRESS & THE COURTS IN NINETEENTH-CENTURY AMERICA* (1990); DAVID RUDENSTINE, *THE DAY THE PRESSES*

decisions prioritizing freedom of information proved to be crucial vis-à-vis the intentions of individuals and institutions to suppress press revelations. As long as a lapdog judiciary exists in Latin America, the consolidation of watchdog journalism will be much more difficult. Therefore, changes in the judicial system in the region are of immediate interest and relevance for IJ.

2. POLITICAL CONSTRAINTS

The persistence of defamation and insult laws can be taken as a sign of the generalized attitude among government officials towards IJ and the press in general. Strengthening press freedom is, for the most part, of little concern for politicians who generally view IJ as a nuisance rather than as a necessity of democratic governance. Around the world, particularly outside of the wealthy West, IJ typically faces political obstacles. Pressures on news organizations and reporters that publicize wrongdoing are common everywhere. Individuals who have been accused of wrongdoing typically resort to both subtle and open methods to suppress stories by lobbying publishers and editors and intimidating reporters.

In Latin America, government officials continue to believe that they can bully news organizations that denounce wrongdoing—a belief that greatly damages IJ. Politicians continue to view news organizations as little more than transmission belts of official information. The intimidation of journalists and punishment of critical journalism have long been common practices. Cutting down or suspending government advertising, ordering investigations into the accounting books of news organizations, threatening to affect various economic interests of media companies, and shutting off information sources, are some of the typical mechanisms through which government officials politically penalize critical journalists and media. As long as these practices remain accepted as part of *quid pro quo* relations between government and the press, IJ will continue to face constraints.

Moreover, despite the consolidation of democracy in the region, authoritarianism remains a crucial obstacle for IJ in some Latin American countries. In Peru, for example, although many laws, in principle, support investigative reporting, the authoritarian position of the Fujimori administration regarding press issues was one of the most fundamental adversaries for IJ in the 1990s.³⁷ Government and intelligence officials

STOPPED: A HISTORY OF THE PENTAGON PAPERS CASE (1996); LEONARD W. LEVY, EMERGENCE OF A FREE PRESS (1985).

37. WAISBORD, *supra* note 5, at 61-68. See also *Fujimori's Heavy Hand; Peru's President Hounds the Press as He finagles for a Third Term*, L.A. TIMES, July, 16, 1997, at 6; Reynaldo

have been responsible for nurturing a climate of intimidation and persecution. Certainly, IJ managed to survive and it produced a number of exposes that had tremendous impact. Each exposé, however, came at a great cost for news organizations and reporters who denounced abuses. For example, reporters for *Caretas* and *La República* were frequent targets of intimidation and attacks.³⁸ Some television reporters, as well as Baruch Ivcher (who then was co-owner of *Canal 2*), were victims of persecution after the news program *Contrapunto* exposed human rights abuses.³⁹ Recent attacks on investigative reporters in Guatemala and Panama also confirm that, even with the consolidation of civilian governments, old habits die hard.⁴⁰ Evident bullying news organizations and journalists through legal and other more violent means does not disappear when military dictatorships fall.

Violence also puts constraints on IJ. In countries such as Colombia, Brazil, Mexico, and Peru, widespread violence has been one of the main obstacles for IJ. Data on threats and murders indicate a clear pattern: the majority of fatal attacks in these countries have taken place in the interior.⁴¹ The murders of Saúl Martínez, the sub-director of the northern Mexican newspaper *El Imparcial*,⁴² and José Luis Ortega Mata, editor of the *Semanario de Ojinaga of Chihuahua*,⁴³ attest to the fact that journalists who report on issues such as drug trafficking and corruption, particularly in areas outside metropolitan centers, are likely to be victims of violence. Paramilitary organizations, guerrilla groups, drug traffickers, and local politicians have been among those responsible for violence.

Munoz, *Wave of Condemnation in Peru After Anti-Media Coup*, AGENCE FRANCE PRESSE, July 14, 1997, available at LEXIS, Business Analysis & Country Information, and Selected Legal Texts and Codes File.

38. WAISBORD, *supra* note 5, at 61.

39. WAISBORD, *supra* note 5, at 68. See also *Former UN Chief to Take Peru Government Before Rights Commission*, AGENCE FRANCE PRESSE, Aug. 4, 1996, available at LEXIS, Business Analysis & Country Information, and Selected Legal Texts and Codes File; *Fujimori's Heavy Hand*, *supra* note 37, at 6; *TV Chief Loses His Citizenship; Protests Erupt over Attacks on Freedom of Expression*, LATIN AMERICAN WEEKLY REPORT, July 15, 1997, at 334, available at LEXIS, Business Analysis & Country Information, and Selected Legal Texts and Codes File; David Koop, *Fujimori Battle Against TV Takes New Twist*, THE JERUSALEM POST, Sept. 21, 1997, at 5, available at LEXIS, Business Analysis & Country Information, and Selected Legal Texts and Codes File.

40. Human Rights Watch, *Guatemala: Raid on Rights Defender's Home Condemned*, Human Rights Watch World Report 1999 (Apr. 16, 1999), available at <http://www.hrw.org/press/1999/apr/guat0419.htm> (last visited Jan. 1, 2002); *Panama*, in UNITED STATES DEP'T OF STATE COUNTRY REP. ON HUMAN RIGHTS PRACTICES—2000, available at <http://www.state.gov/g/drl/rls/hrrpt/2000> (last visited Jan. 1, 2002).

41. See generally Silvio Waisbord, *Antipress Violence and the Crisis of the State*, 7 HARV. INT'L J. PRESS/POLITICS (forthcoming 2002).

42. *Truth Takes a Hit*, AUSTIN AMERICAN-STATESMAN, Mar. 28, 2001, at A12-13.

43. David McLemore, *Presidio Grocer Freed in Reporter's Killing; Case Roused Backers on Both Sides of Border*, DALLAS MORNING NEWS, July 14, 2001, available at 2001 WL 24409807.

Moreover, a failure to punish arguably, breeds further violence. Governments have been inefficient in finding perpetrators and, in cases where suspects were found, ordering legal sentences. The attacks against reporters of *Prensa Libre* and *El Periódico* in Guatemala exemplify this problem.⁴⁴ These attacks followed revelations that members of Congress violated laws and allocated monies for personal use without parliamentary approval. Verbal attacks by government officials and remarks condoning press violence have contributed little to improving this situation. For example, a cabinet member in Guatemala made threats against reporters and the publisher of *El Periódico* after they investigated corruption in the bank Crédito Hipotecario Nacional.⁴⁵ Worse, in some cases, government officials have tacitly or explicitly justified attacks on journalists, such as former President Menem's declarations about violence being part of journalism after a reporter was ferociously beaten after he denounced corruption involving government officials.⁴⁶

3. ECONOMIC CONSTRAINTS

Some observers argue that only news organizations that exist economically independent from governments are in a better situation to practice IJ, as it is unconceivable that organizations that rely on government advertising can denounce the hand that feeds them.⁴⁷ However, the advertising weight of governments, particularly in countries with small advertising markets, has historically deterred news organizations from engaging in IJ. Several examples illustrate this traditional pattern in which governments respond to press criticisms by threatening or actually stopping official advertising,⁴⁸ which in most cases is vital to the economic health of news organizations. Notable examples include the decisions of former Brazilian President Fernando Collor de Mello to order investigations into the accounting books of news organizations

44. See Human Rights Watch, *Guatemala: Human Rights Developments*, Human Rights Watch World Report 2001, available at <http://www.hrw.org/wr2k1/americas/guatemala.htm>. (last visited Jan. 1, 2002); see also *Government Mob Attacks Newspapers, Threatens Staff*, HOUSTON CHRONICLE, Mar. 4, 2001 at 2C.

45. Stephen Franklin, *In Guatemala, Violence Swells Again; 'A Dangerous Change' Leaves Lawyers, Journalists Victims of Attacks, Murder*, DALLAS MORNING NEWS, Apr. 13, 2001, at 37A, available at 2001 WL 18814199.

46. Carl Honore, *Assaults on Argentine Journalists Rise as Vote Nears*, MIAMI HERALD, Sept. 23, 1993, at A6; *Start of a 'Dirty War'?*, MIAMI HERALD, Sept. 17, 1993, at A22.

47. Rick Stapenhurst, *THE MEDIA'S ROLE IN CURBING CORRUPTION* 10 (2000). See also Frank Vogl, *TI Working Paper: Curbing Corruption: The Media's Work, Recommendation for Action*, 1999, available at <http://www.transparency.org/documents/work-papers/vogle-recommendations/12-conclusions.htm> (last visited Jan. 1, 2002).

48. See Ian Katz, *Argentine Press Gaining Vigor*, MIAMI HERALD, May 7, 1992, at A24.

after they reported that he was involved in an influence-peddling ring,⁴⁹ and, in Argentina, threats by the Menem administration to stop placing official advertising in *Página/12*, a daily newspaper that investigated several corruption involving government officials.⁵⁰

Recent experiences in Latin America suggest that the argument that IJ requires economically strong and independent news organizations from the government is partially correct. Certainly, some news organizations with a solid, independent economic base have produced a number of exposes on a variety of subjects.⁵¹ Some are divisions of large, advertising-rich media companies, and, arguably, have little to fear in terms of the economic consequences of investigating government officials.⁵² The privatization of state-owned companies further decreased the advertising power of government officials, thus opening better conditions for IJ to conduct investigation of official wrongdoing.⁵³ The economic reality of IJ, however, is more complex.

First, publications with little economic muscle have also practiced IJ.⁵⁴ For them, IJ has brought negative economic results.⁵⁵ Some advertisers decided to withdraw advertising monies from such publications for two reasons: (1) they fear that advertising in "muckraking" publications would endanger their relations with powerful officials; and (2) they believe that those publications offer a controversial environment for their business.

Second, IJ can step on many political toes and, consequently, can hurt the economics of news organizations. Attracting a great deal of commercial advertising can potentially offer a solid base for news organizations to gain financial independence and distance from governments, but it often means that investigative reporters can uncover wrongdoing as long as these findings do not affect advertisers or the interests of their employers. Therefore, IJ faces limitations in investigating some subjects (particularly economic and financial issues) because many news organizations are currently divisions of large businesses with vast economic interests.⁵⁶ In other cases, close-knit ties between large advertisers and government officials often result in economic sanctions and threats against news organizations that seek to reveal official wrongdoing.⁵⁷

49. See *Pedro Collor to Defend Accusations Before Congressional Committee*, AGENCE FRANCE PRESSE, May 31, 1992, available at LEXIS, Non-US News File.

50. See Katz, *supra* note 48, at A24.

51. *Id.*; Stephen Franklin, *supra* note 45, at 37A; WAISBORD, *supra* note 5, at 72-73.

52. Franklin, *supra* note 45, at 37A; WAISBORD, *supra* note 5, at 72-73.

53. WAISBORD, *supra* note 5, at 65.

54. *Id.* at 174.

55. See *id.* at 174-75.

56. See *id.* at 72-73.

57. *Id.* at 66-67.

Deregulation and privatization of media markets has not proven to be the “cure-all” for the historical problems of IJ. Moreover, by reinforcing the power of market pressures, deregulation and privatization have strengthened the limitations that exist on the issues that can be investigated.

B. *Internal Constraints*

In addition to external constraints, some internal limitations on IJ must be briefly mentioned. One important internal constraint is the ambiguous commitment of news organizations to IJ as reflected in the scarcity of resources allocated to IJ and constant editorial pressures on journalists. Quality, in-depth IJ requires human and monetary resources that media companies rarely willing assign. As a result, much of IJ results from the initiative of reporters with little or no support from their employers. Investigative reporters often have to battle against sources, legal problems, and editors and executives who are reluctant to assign human and monetary resources to follow stories. Journalists are frequently expected to produce stories quickly and cheaply. Under these circumstances, the quality of investigative reports suffers.

Additionally, the lack of newsroom autonomy is also detrimental to IJ. Fearing irate publishers and board members, reporters are driven to self-censorship. Further where unemployment is high among journalists, self-censorship becomes a survival mechanism to maintain job security. Without editorial support, journalists lack incentives to risk their jobs to uncover wrongdoing. Corruption in journalism also limits IJ. Although it is difficult to estimate the extent of corruption, the newsroom grapevine is full of rumors about stories that have been killed by reporters in return for monies and other favors.

IV. HOW TO SUPPORT AND IMPROVE INVESTIGATIVE JOURNALISM?

The strengthening of IJ is vital for improving the quality of Latin American democracies. IJ is central to the creation and consolidation of democratic communicative spaces and societies. IJ is particularly necessary in light of the weakness of accountability mechanisms and the centrality of the media to contemporary politics. If the press fails to support IJ, the press abandons one of its key functions to democracy. This task requires more than a mere commitment from news organizations. Without basic political, economic, and legal conditions, news organizations are disinclined to promote critical reporting.

The persistence of a number of political and socio-economic problems in Latin America requires the actions of diverse organizations. The press can make very important contributions by presenting informa-

tion about these problems, highlighting issues that need attention, providing forums for debate, and inviting solutions. To do this, the press must actively identify areas that require public attention rather than passively relay information produced by governments and other sources.

The goal should be the creation and maintenance of conditions for the consolidation of a journalism that responsibly uncovers wrongdoing in diverse social areas. To achieve this goal, many areas need attention. The existence of legal mechanisms that effectively facilitate public access to official information should be a priority. Such laws must be understood as part of the more general need for laws that protect citizens and give them tools to monitor their government's actions. For IJ, such laws are important but, alone, insufficient. Without allocating resources so that government offices can attend to requests for information, and without enforcing the gathering and collection of public records, public access laws are unlikely to make a difference in the work of investigative reporters.

When enacted, lack of enforcement of public information laws is also a problem. In many countries, such as Peru or Colombia, such laws actually exist, but conditions and practices have not substantially changed.⁵⁸ The judiciary plays a central role in supporting public requests. Additionally, the dissemination of information about the existence of these laws, and how citizens and journalists can use them, is crucial.

The legal problems of IJ, however, are not limited to the absence or lack of enforcement of public information laws. IJ currently confronts a variety of legal difficulties ranging from official manipulation of the judiciary to slow-moving judicial systems. A stronger IJ requires a truly independent judiciary. The persistence of certain laws (e.g. slander and contempt laws) stacks the deck against IJ. Legal changes are crucial for the promotion of IJ.

Programs promoting public access laws are recommended. Different interested parties (e.g. reporters, editors and publishers, lawyers and judges, government officials, legal scholars) should participate in these discussions. Likewise, regional discussions about the need to reform specific press laws that make IJ difficult are necessary.

New technologies open many opportunities for IJ. With respect to public information laws, they facilitate access to public records by offering a relatively cheap alternative for the compilation of records that can be at the fingertips of citizens and reporters. In terms of reporting practices, new technologies allow journalists to consult a diversity of sources

58. See JAIRO E. LANAO, *FREEDOM OF THE PRESS & THE LAW* 206-07, 459 (1999).

and databases and facilitate easy and frequent connections among journalists investigating related topics.

Programs discussing the possibilities of expanding the public availability of new technologies, supporting the online activities of non-government organizations (which can act as sources of information), and strengthening journalistic on-line communities are recommended. Regional thinking and activities should also be encouraged. Many recent investigations that reporters have conducted have regional ramifications and implications that go beyond national boundaries. Given the nature of some problems (e.g. drug trafficking, money laundering, financial fraud, contraband) that are typical targets of IJ, contacts among journalists in various regions are crucial. Therefore, investigative reporters should be encouraged to develop regional ties as regional contacts provide opportunities to become acquainted with new developments and to devote time for detailed analysis of investigations. Especially pivotal is the exchange of ideas.

In terms of journalism education, training in the following areas is very important and often lacking.

A. *Legal*

Journalism schools in Latin America, unfortunately, still put little emphasis on legal education. Familiarity with the law and how it affects reporting is indispensable for investigative journalists, particularly considering that a number of laws continue to be crucial obstacles for their work. Instead of solely relying on the opinion of legal experts who work for their news organizations, reporters should be familiar with several press laws that have significant consequences for their work.⁵⁹

B. *Technology*

Most reporters have superficial training in the use of the variety of new technologies in reporting. These new technologies tremendously benefit investigative reporting. Computer-assisted reporting and the Internet, for example, are indispensable for the production of high-quality reports. Most reporters, however, get few chances to become familiar with these instruments. The lack of economic resources in most journalism schools continues to be a deficit that only a few news organizations can successfully remedy. Therefore, support for training in new technologies is key to improve investigative reporting.

59. WAISBORD, *supra* note 5, at 176.

C. *Ethics*

IJ inevitably deals with conflicting expectations and morals. A host of ethical issues frequently arise in IJ, such as how far journalism can go in search of accountability without violating privacy rights. An incomplete list of ethical issues includes: privacy; accountability; accuracy; responsibility; and moral decency. The widespread use of undercover tactics in both print and broadcast journalism, for example, repeatedly raises ethical issues.

Press ethics is a relatively new issue in journalism education that has yet to receive sufficient attention.⁶⁰ Codes of ethics do not seem to resolve ethical dilemmas. Overcoming differences across many participants with different interests and perspectives is difficult or maybe impossible. Efforts at self-regulation have not been entirely successful or productive. Perhaps the answer is not to resolve issues once and forever, but rather to equip reporters with analytical tools to think through the ethical dimensions of their work. Because reporters must be aware of the many ethical implications of their actions, it is necessary to provide them with opportunities to reflect on the ethics of IJ.

D. *Specific Reporting Subjects*

Training in the art of IJ in general is useful, but alone, is insufficient. IJ in Latin America tends to focus on government wrongdoing at the expense of other areas of reporting. Reporters should be encouraged to the expand the agenda of IJ. Also, subjects such as the environment or the financial industry, which some exposes have targeted,⁶¹ demand specific training and knowledge that reporters do not receive in journalism schools.

V. CONCLUSION

The existence of economic and political constraints is frequently mentioned in seminars and conferences discussing IJ. Critics observe that the formation of media monopolies and oligopolies undermines the autonomy that news organizations require to practice IJ.⁶² Close ties between media moguls and government officials also constrain IJ. Little is discussed, however, in terms of future ideas to improve the situation,

60. See generally *ETHICAL ISSUES IN JOURNALISM AND THE MEDIA* (Andrew Belsey et al. eds., 1992); CLIFFORD G. CHRISTIANS ET AL., *MEDIA ETHICS: CASES & MORAL REASONING* (4th ed. 1995); MATTHEW KIERAN, *MEDIA ETHICS* (1997).

61. WAISBORD, *supra* note 5, at 234-35.

62. See generally BEN H. BAGDIKIAN, *THE MEDIA MONOPOLY* (5th ed. 1997); ROBERT W. MCCHESENEY, *RICH MEDIA, POOR DEMOCRACY: COMMUNICATION POLITICS IN DUBIOUS TIMES* (1999).

let alone eradicate those constraints. Solutions will not be easy. The absence of anti-trust legislation certainly allows for media concentration. Additionally, editorial limitations on subjects that IJ can tackle result from informal agreements between business and governments. Often, it is a journalist's decision to fight for, drop, or save stories dealing with issues that affect personal relations and many other interests. Leaving this problem to individual decisions misses the fact that it is a generalized situation that affects IJ at large. It is important to discuss and search for modest ways to solve problems. Further thinking and debate on mechanisms that protect and promote the work of investigative reporters and strengthen their position vis-à-vis economic and political limitations is necessary.